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**FILED**  
**JUN 1 1984**  
**ALEXANDER L. STEVAS.**  
CLERK

No. \_\_\_\_\_

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**IN THE  
SUPREME COURT  
OF THE UNITED STATES**

**October Term, 1984**

**EDWARD M. ZOLLA,**

**Petitioner,**

**vs.**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**SUPPLEMENTAL APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT**

**ROBERT H. WYSHAK  
LILLIAN W. WYSHAK  
8907 Wilshire Boulevard  
Beverly Hills, CA 90211  
(213) 273-2044**

**Attorneys for Petitioner**

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## APPENDIX C

F I L E D

JUN 30 1982

Clerk, U.S. District  
Court  
Central District of  
California

By

Deputy

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF	)	
AMERICA,	)	CASE NO. CV 79-4309
	)	MRP
Plaintiff,	)	
	)	FINDINGS OF FACT
vs.	)	AND CONCLUSIONS
	)	OF LAW
EDWARD M. ZOLLA,	)	
	)	
Defendant.	)	
_____	)	

The motion of plaintiff, the United States of America, for summary judgment came on regularly for hearing before the Honorable Mariana R. Pfaelzer on February 9, 1981. The Court, having read the papers filed and considered the oral arguments presented, issues the following Findings of Fact and Conclusions of Law.



## FINDINGS OF FACT

1. Plaintiff, the United States of America, filed this suit to recover unpaid federal income taxes, interest, and penalties for the 1968, 1969, 1974, and 1975 taxable years of defendant, Edward M. Zolla. On September 11, 1980, partial summary judgment was granted in favor of the plaintiff as to defendant's 1974 and 1975 taxable years. Plaintiff's motion as to defendant's 1968 and 1969 taxable years was denied, without prejudice. Plaintiff has now renewed its motion for summary judgment for defendant's 1968 and 1969 income taxes.

2. Defendant did not file a federal income tax return and did not make estimated tax payments for the calendar year 1968.

3. On December 10, 1973, a delegate of the Secretary of the Treasury made an assessment against the defendant for unpaid



1968 federal income taxes, interest, and penalties in the amount of \$30,815.62. The assessment resulted from an examination of the defendant's 1968 taxable year by the Office of the District Director of Internal Revenue, Los Angeles.

4. The December 10, 1973 assessment consisted of the following:

Unpaid 1968 income taxes	\$19,740.00
Interest	5,509.62
Penalty imposed for failure to file a timely federal income tax return	4,935.00
Penalty imposed for failure to pay estimated taxes	<u>631.00</u>
Total Assessment	\$30,815.62

5. Prior to making the December 10, 1973 assessment, a Statutory Notice of Deficiency was sent by certified mail to the defendant on June 11, 1973 at 902 North Bedford Drive,





Beverly Hills, California.

6. On December 10, 1973, notice and demand for payment of the assessment were made upon the defendant.

7. On January 10, 1978, a credit of \$33.93 was applied against the December 10, 1973 assessment.

8. The defendant has failed to pay the \$30,781.69 unpaid balance of his 1968 federal income tax liability plus accrued interest and penalties.

9. On June 26, 1970, the defendant and his wife, Betty Zolla, filed an untimely joint federal income tax return for their 1969 calendar year. The return reported a tax of \$1,201.00

10. A credit for federal income tax withheld of \$655.20 was claimed on the return and allowed, resulting in a balance due of \$545.80. The balance was subsequently paid together with assessed penalties plus interest



for failure to file the return and to pay the balance due in a timely fashion.

11. On November 12, 1973, a delegate of the Secretary of the Treasury made an assessment against the defendant for unpaid 1969 federal income taxes, interest, and penalties totalling \$44,902.50. The assessment resulted from an examination of the defendant's 1969 taxable year by the Office of the District Director of Internal Revenue, Los Angeles.

12. The November 12, 1973 assessment consisted of the following:

Unpaid 1969 income taxes	\$32,905.00
Interest	7,061.50
Penalty imposed for failure to file a timely federal income tax return	4,936.00
	<hr/>
Total assessment	\$44,902.50

13. Prior to making the November 12, 1979 assessment, a Statutory Notice of Deficiency



was sent by certified mail to the defendant on June 11, 1973 at 902 North Bedford Drive, Beverly Hills, California.

14. On November 12, 1973, notice and demand for payment were made upon the defendant.

15. On December 19, 1978, a payment of \$23.42 was applied against the November 12, 1973 assessment.

16. The defendant has failed to pay the unpaid balance of \$44,879.08 on his 1969 federal income tax liability, plus accrued interest and penalties.

17. Defendant filed his 1970 federal income tax return on October 27, 1971 and recorded his address on it as 902 North Bedford Drive, Beverly Hills, California.

18. Defendant did not file a federal income tax return for 1971.

19. Defendant filed his 1972 federal income tax return in 1974 and listed his



address as 349 South Linden Drive, Beverly Hills, California.

20. On July 25, 1972, defendant was visited by tax liability Revenue Officer Leslie at 303 North La Peer Drive, Beverly Hills. The point of Officer Leslie's visit was to try to collect delinquent employment taxes.

21. To the extent that any Conclusions of Law are deemed to be Findings of Fact, they are incorporated into these Findings of Fact.

#### CONCLUSIONS OF LAW

1. To the extent that any Findings of Fact are deemed to be Conclusions of Law, they are incorporated into these Conclusions of Law.

2. This Court's jurisdiction is based on 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.





3. Venue lies within the Central District of California as the district in which the defendant resides. 28 U.S.C. § 1396.

4. A taxpayer's "last known address" for the purposes of 26 U.S.C. § 6212(b) is "the taxpayer's last-permanent address or legal residence known by the Commissioner or the last known temporary address of a definite duration to which the taxpayer has directed the Commissioner to send all communications." Alta Sierra Vista, Inc. v. Commissioner, 62 T.C. 367 (1974). aff'd mem., 538 F.2d 334, (9th Cir. 1976).

5. Section 6212(b) does not provide that the Commissioner must send notice to the taxpayer's actual current address. All the Commissioner must do is send the notice of deficiency to the address which he reasonably believes is the taxpayer's current address. The Commissioner must exercise "reasonable diligence" in ascertaining the



taxpayer's actual address but "he is entitled to treat the address appearing on a taxpayer's return as the last known in the absence of clear and concise notification from the taxpayer directing the Commissioner to use a different address." Alta Sierra Vista, supra, at 374. Thus, the Commissioner must only send notice which is reasonably calculated to reach the taxpayer, but which need not actually reach the taxpayer.

6. The burden is on the taxpayer to keep the Commissioner advised of his current address. Id.

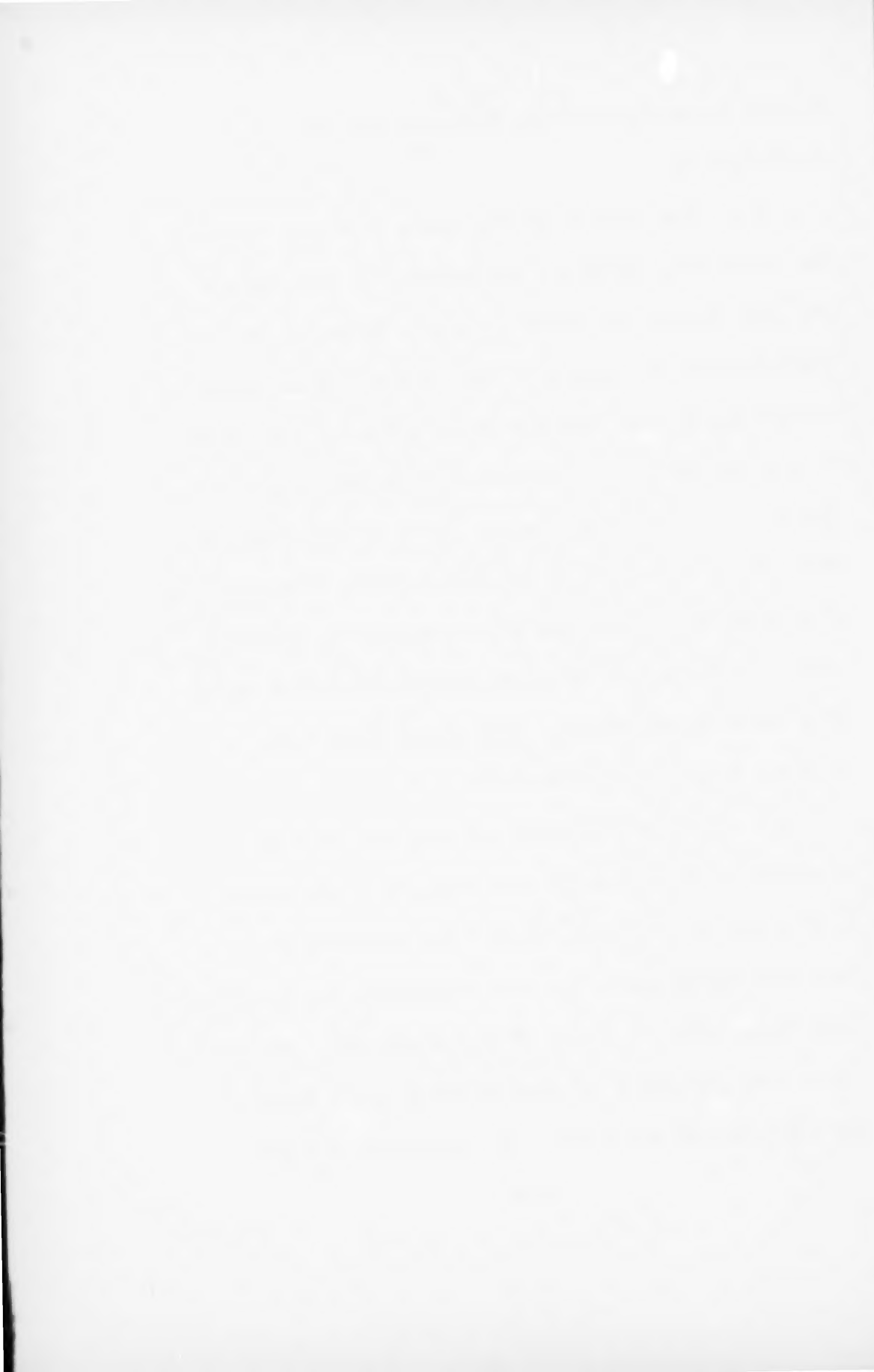
7. In this case, the Commissioner's reasonable knowledge of defendant's last known address on June 11, 1973 was from defendant's 1970 federal income tax return since defendant did not file a tax return in 1971 and filed his 1972 tax return in 1974. Defendant's 1970 federal income tax return listed defendant's address as 902



North Beverly Drive, Beverly Hills,  
California.

8. The visit of Revenue Officer Leslie on July 25, 1972 to defendant's residence at 303 North La Peer Avenue, Beverly Hills, California to collect delinquent employment taxes does not impute knowledge on the Audit Division of this address of defendant's. Kuebler v. Commissioner, 1979 - 425 Tax Ct. Mem. Dec. (P.-H.) ¶ 79.095 (1979) (Collection division's knowledge of taxpayer's current address does not charge audit division with the same knowledge). See also Alta Sierra Vista, supra, at 376-377.

9. In the absence of copies of the statutory notices of deficiency, the Commissioner may prove that the necessary notices were sent to the taxpayer by proffering Post Office Form 3877. Form 3877 shows that the notices of deficiency were sent by certified mail to the taxpayer's last



known address. United States v. Ahrens, 530 F.2d 781 (8th Cir. 1976). The forms submitted by plaintiff in this case satisfactorily prove that plaintiff sent defendant the necessary notices.

10. The Commissioner has offered "foundational support" for defendant's deficiency determination and, therefore, a "presumption of correctness" attaches to it. Weimerskirch v. Commissioner, 596 F.2d 358 (9th Cir. 1979). The burden was on the defendant to prove that the plaintiff's tax assessment is erroneous. He has not carried that burden and has failed to show that a genuine issue of material fact exists with respect to his liability for his unpaid 1968 and 1969 federal income tax liabilities.

DATED: June 28, 1982

/s/ Mariana R. Pfaelzer

Mariana R. Pfaelzer  
United States District Judge

## APPENDIX D



and

JUN 30 1982

Clerk, U.S. District  
Court  
Central District of  
California

STEPHEN S. TROTT  
U.S. Attorney  
CHARLES H. MAGNUSON  
Asst. U.S. Attorney  
Chief, Tax Div.  
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Asst. U.S. Attorney

By

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Attorneys for U.S.A.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF ) NO. CV 79-4309-MRP  
AMERICA, )  
)  
Plaintiff, ) SUMMARY JUDGMENT FOR  
)  
vs. ) THE TAXABLE YEARS  
)  
EDWARD M. ZOLLA, ) 1968 and 1969  
)  
Defendant. )

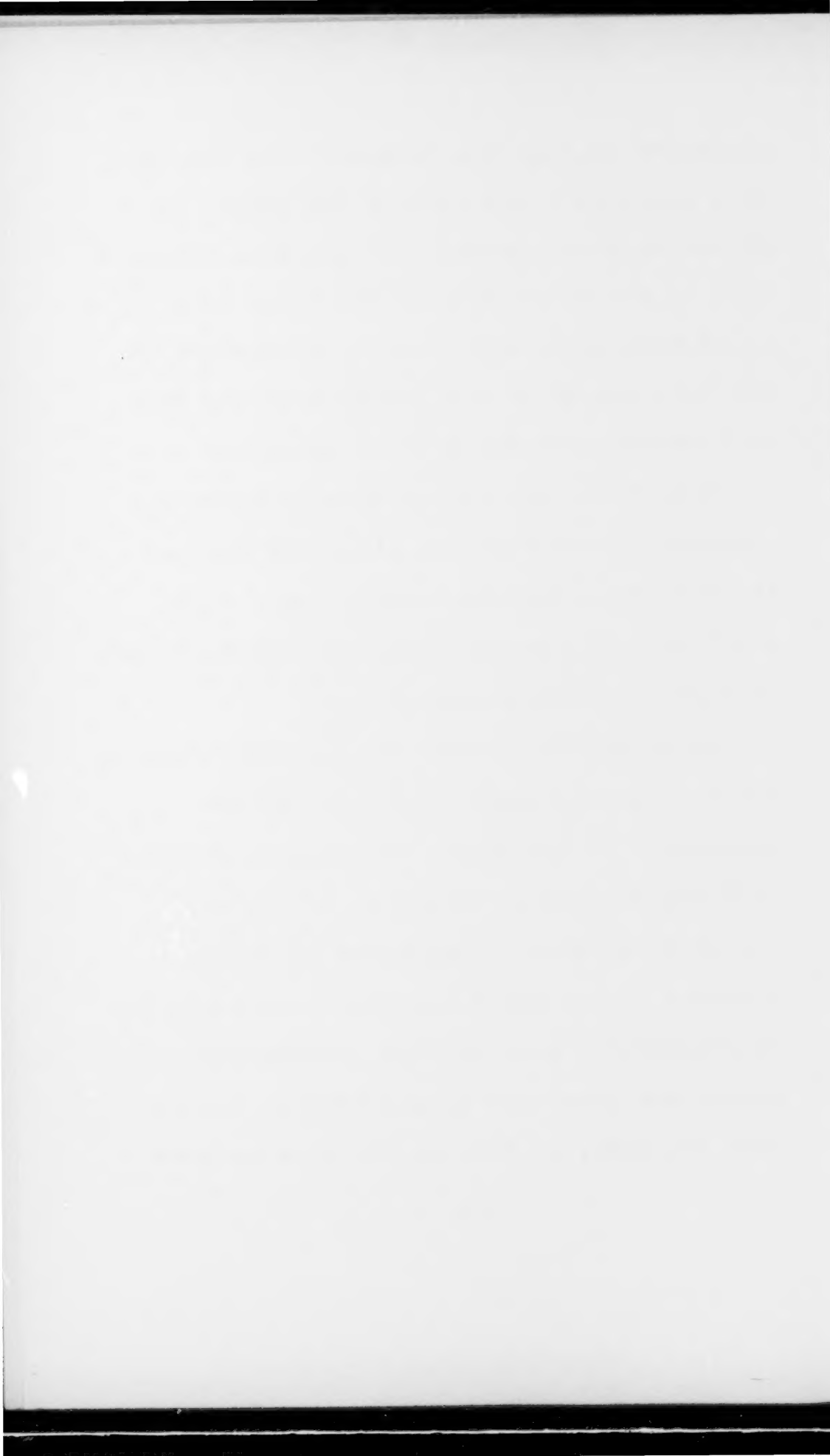
On September 11, 1980, this Court entered partial summary judgment in favor of the



plaintiff against the defendant for the taxable years 1974 and 1975 in the amount of \$7,088.85 plus accrued interest from August 2, 1980 to the entry date at the daily rate of \$1.49 plus costs and interest thereafter on the full amount of the judgment at the rate of 7 percent per annum until satisfied.

This Court now having granted summary judgment in favor of the plaintiff against the defendant for the taxable years 1968 and 1969, and having filed herewith findings of fact and conclusions of law.

IT IS HEREBY ORDERED AND ADJUDGED that for the taxable years 1968 and 1969 the plaintiff, United States of America, recover from the defendant, Edward M. Zolla, the sum of \$124,965.77 (consisting of unpaid assessed income taxes, interest and penalties of \$75,660.77, plus accrued, unassessed interest and penalties as provided by law to June 25, 1982, of \$49,305.00) plus accrued



interest from June 26, 1982, to the date of entry of this judgment at the daily rate of \$34.56 plus its costs of suit of \_\_\_\_\_.

Interest on the full amount of this judgment shall accrue at the rate of seven percent (7%) per annum until satisfied.

DATED: This 28 day of June, 1982.

/s/ Mariana R. Pfaelzer

MARIANA R. PFAELZER  
UNITED STATES DISTRICT JUDGE

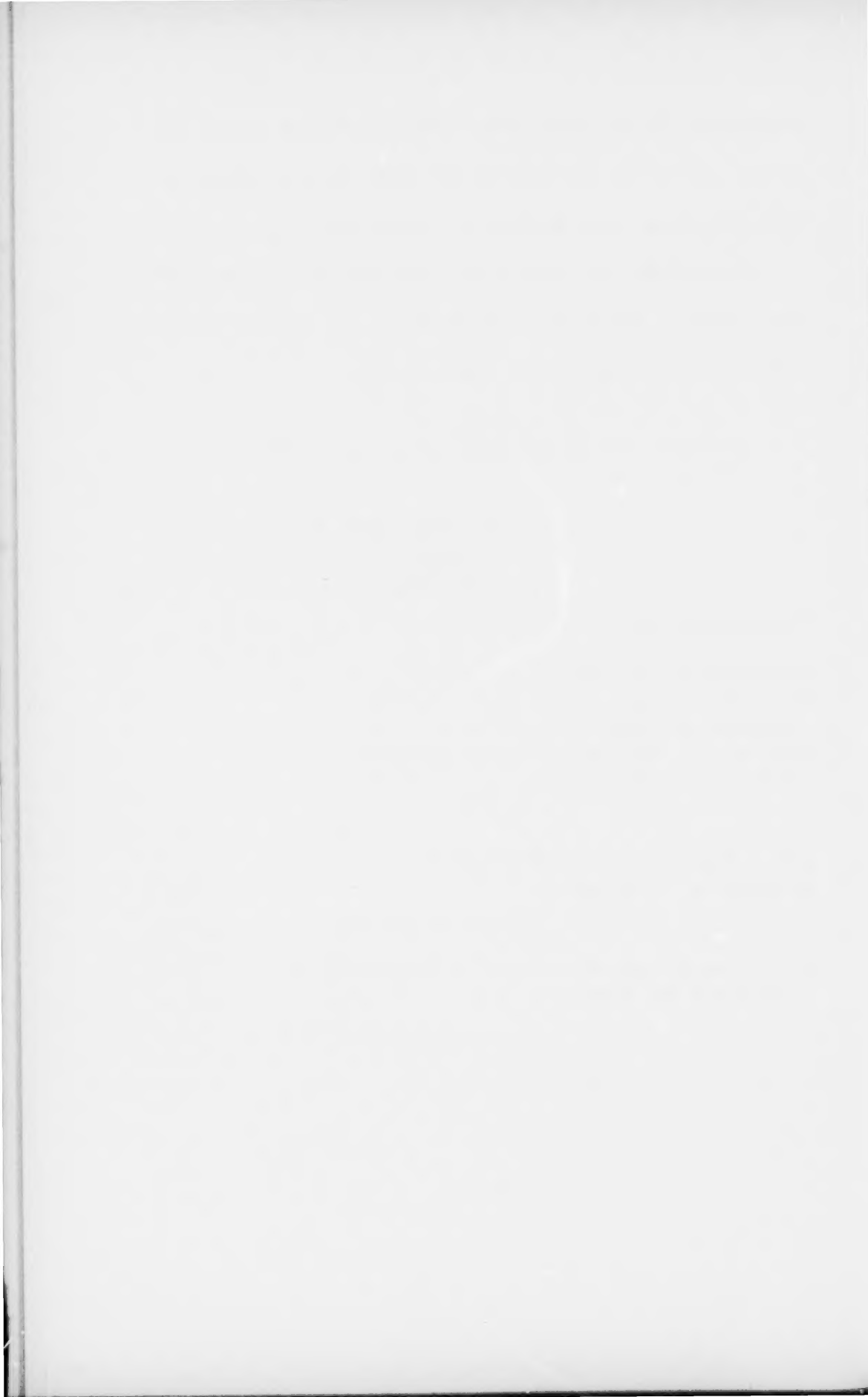
PRESENTED BY:

STEPHEN S. TROTT  
United States Attorney  
CHARLES H. MAGNUSON  
Assistant United States Attorney  
Chief, Tax Division

/s/ Arthur M. Greenwald

ARTHUR M. GREENWALD  
Assistant United States Attorney

Attorneys for Plaintiff, United  
States of America

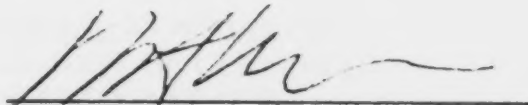


**CERTIFICATE OF SERVICE**

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I, R. H. Wyshak, a member of the bar of this Court and counsel of record for petitioner, hereby certify that I served the within Supplemental Appendix by mailing three copies to the Solicitor General, Department of Justice, Washington, D.C. 20530 on June 8, 1984 in a duly addressed envelope first class postage prepaid.

June 8, 1984

A handwritten signature in dark ink, appearing to read 'R. H. Wyshak', is written over a horizontal line.

R. H. Wyshak